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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,362	01/22/2002	Chio Fai Wong	33419-177855	9086

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EXAMINER

NOLAN, SANDRA M

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 05/11/2004

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/051,362

Applicant(s)

WONG, CHIO FAI

Examiner

Sandra M. Nolan

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 6) ☐ Other: _____

DETAILED ACTION

Claims

1. Claims 1-9 and 11-17 are pending.

Withdrawal from Issue/Withdrawal of Allowance

2. After further review by USPTO personnel, the application has been withdrawn from issue. See the 22 April 2004 to that effect. The allowance of claims 1-9 and 11-17 is hereby withdrawn in order to apply the grounds of rejection below.

Drawings

3. The drawings must be corrected in accordance with the comments of the USPTO Draftsperson on the form PTO-948 that accompanied the Notice of Allowance mailed on 15 October 2003 (Paper No. 8).

New Rejections

Examiner Comments

4. In the following rejections, the examiner interprets "bottleneck" and "neck" as synonymous and as meaning that portion of the polyester bottle that is between its open end and its flange/strip. The flange/strip extends outward from the bottle and sits atop a blow mold.

Also, concerning this application, "container" and "bottle" are deemed synonymous.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 and 11-17 are rejected under 35 U.S.C. 112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

What do “a crystallized length of the bottleneck portion” and “crystallized bottleneck portion” mean? Is applicant claiming a bottleneck in which one part is crystallized while another is not?

Please clarify the claims.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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8. Claims 1-4, 11-12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsukada et al (US 4,591,060).

Tsukada teaches a polyester container (abstract) having an unthreaded neck (see the sole figure). Polyethylene terephthalate (PET) is used (col. 1, line 18). The strip 7 indicates the end of the bottle's neck (figure; col. 3, line 54). The neck is partially crystallized (see the shaded area near 5a and 5b in the figure and the text at col. 3, lines 56-60). The figure, which is presumed to depict the bottle's actual size, has a crystallized portion of about 50 mm. Crystallization of PET containers is said to be carried out to help them resist thermal deformation (col. 4, lines 37-43).

Tsukada fails to teach that the crystallized portion of its neck has a length of 0.5 to 35 mm.

In the absence of convincing objective evidence to the contrary, it would have been obvious to one having ordinary skill in the art at the time that the invention was made to crystallize any suitable portion of the length of the neck of Tsukada's bottle to so that the neck can better resist deformation during subsequent processing.

The motivation to crystallize the neck to a suitable length is found at col. 4, lines 37-43 of Tsukada, where it discusses the improved resistance of PET containers to thermal deformation due to crystallization.

It is deemed desirable to improve the resistance of PET containers to thermal deformation in order to facilitate the bottles' handling during processing and filling.

9. Claims 1-3, 11 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishihara et al (US 6,012,597).

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Nishihara teaches PET bottles (col. 9, lines 2-3) having a bottleneck **21** that bears no screw threads (Figure 1). Figure 1 shows a cap portion **21** that is described, at col. 7, line 65 through col. 8, line 1, a crystallized to a degree of crystallinity of 27% or more. Figure 3 shows an upper cap portion **29**, above the bottle's neck flange, which flange rests atop the blow mold in Figure 3. The cap is crystallized (col. 9, lines 3-4). Crystallization gives the bottle good heat resistance (col. 8, lines 4-5).

Nishihara fails to teach a 0.5 to 35 mm crystallized portion in its bottleneck.

In the absence of convincing objective evidence to the contrary, it would have been obvious to one having ordinary skill in the art at the time that the invention was made to crystallize the neck of Nishihara's bottle to any suitable length in order to strengthen it to help it resist the heat to which the bottles will be subjected later.

The motivation to crystallize the neck of Nishihara's bottle is found at col. 8, lines 4-5, where the use of crystallization to give good heat resistance to bottles is taught.

It is deemed desirable to employ bottles with heat resistant necks when making and filling bottles so that they may be handled with minimal damage.

Conclusion

Any inquiry concerning this communication should be directed to the Examiner, Sandra M. Nolan, whose telephone number is 571/272-1495. She can normally be reached on Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

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If attempts to reach the Examiner by telephone are unsuccessful, her supervisor, Harold Pyon, can be reached at 517/272-1498. The general fax number for the art unit is 703/305-5436. The receptionist answers 571/272-1300.



S. M. Nolan
Patent Examiner
Technology Center 1700

SMN/smn
10051362(9)
29 April 2004 (revised)